

OVERVIEW OF ATTORNEY RECOMMENDATIONS

54-5604. Definitions		
<p>(1) “Telehealth” means a modality of providing healthcare to a person in Idaho through the use of electronic communications, information technology, asynchronous store and forward transfer, or synchronous interaction between a healthcare provider in one location (distant site), and a patient in another location (originating site) for any aspects of healthcare, including but not limited to: clinical care, health education, home health, and facilitation of self-managed care and caregiver support. Within this act, the terms telehealth, telehealthcare and telemedicine are used interchangeably.</p> <p>(2) “Healthcare Provider” means a person who is licensed by the state of Idaho pursuant to Title 54, Idaho Code, to deliver healthcare consistent with his or her license.</p> <p>(3) “Asynchronous store and forward transfer” means the transmission of a patient’s healthcare information from an originating site to the provider at the distant site without the patient being present over a secure connection that complies with state and federal security and privacy laws.</p> <p>(4) “Synchronous interaction” means real time communication through interactive technology that enables a healthcare provider and a patient at two locations separated by distance to interact simultaneously through two-way video and audio or audio transmissions.</p> <p>(5) “Originating site” means the location of the patient in Idaho at the time the telehealth service is furnished.</p> <p>(6) “Distant site” means the site at which the healthcare provider delivering the telehealth service is located at the time the service is provided.</p>		There are a few small editorial changes which do not change the intent.
DRAFT FROM JAN 16 COUNCIL MEETING	ATTORNEY RECOMMENDATIONS	NOTES
54-5605. Practice of telehealth		
<p>(1) Licensure. The practice of telehealth is allowed by a healthcare provider licensed or regulated in Idaho so long as the healthcare provider acts within the scope of services for which the healthcare provider is licensed or regulated and provided such health care provider meets the community standard of care. The practice of telehealth by any healthcare provider is prohibited if the healthcare provider is not in full compliance with this act.</p>	<p>(1) Licensure and Scope of Practice. A person must be a healthcare provider as defined in Section 54-5604(2) to utilize telehealth in his or her practice. A healthcare provider utilizing telehealth in his or her practice must at all times act within the scope of the healthcare provider's license and all applicable laws and regulations, including but not limited to this act and the applicable Idaho community standard of care.</p>	Clarified

<p>(2) Establishment of a provider-patient relationship. Where an existing provider-patient relationship is not present, a provider must take appropriate steps to establish a provider-patient relationship using two-way audio and visual interaction, whenever possible, provided the community standard of care is met. However, nothing in this act shall prohibit telephone consultations: (a) by a healthcare provider with a patient with whom the healthcare provider has a preexisting provider-patient relationship, or (b) by a healthcare provider with another healthcare provider who has a current provider-patient relationship with that patient, or (c) by a healthcare provider with a patient with whom the healthcare provider does not have a relationship, if the healthcare provider is taking call for another provider in the same community who does have a pre-existing provider-patient relationship with that patient.</p>	<p>(2) Establishment of a provider-patient relationship. If a healthcare provider utilizing telehealth in his or her practice does not have an established provider-patient relationship, the healthcare provider must take appropriate steps to establish a provider-patient relationship by using two-way audio and visual interaction, provided the applicable Idaho community standard of care is met. However, nothing in this act shall prohibit electronic communications: (a) by a healthcare provider with a patient with whom the healthcare provider has a preexisting provider-patient relationship, or (b) by a healthcare provider with another healthcare provider who has a current provider-patient relationship with that patient, or (c) by a healthcare provider with a patient with whom the healthcare provider does not have a relationship, if the healthcare provider is taking call for another provider in the same community who does have a pre-existing provider-patient relationship with that patient, or (d) in an emergency, which means occurrence or imminent threat of a condition threatening life or severe bodily harm.</p>	<p>Attorneys felt the language “whenever possible” was vague and hard to regulate and could pose an invitation for litigation with ambiguity. Because of that they recommended removing “whenever possible” and offered an addition of an emergency exception as provided in subsection (d)</p> <p>Additional language to clarify and affirm current practices was also added.</p>
<p>(3) Evaluation and treatment. A documented evaluation and collection of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contraindications to the treatment recommended and provided must be obtained prior to providing treatment, including issuing prescription drug orders. Treatment and consultation recommendations made in an online setting, including issuing a prescription drug order via electronic means, will be held to the same community standard of care as those in traditional in-person settings. Treatment, including issuing a prescription drug order, based solely on an online questionnaire does not constitute an acceptable standard of care.</p>	<p>(3) Evaluation and treatment. A healthcare provider must, prior to providing treatment, including issuing a prescription drug order, obtain and document, relevant clinical history and current symptoms to establish the diagnosis and identify underlying conditions and/or contraindications to the treatment recommended. Treatment recommendations made through telehealth, including issuing a prescription drug order, will be held to the applicable Idaho community standard of care that applies in an in-person setting. Treatment, including issuing a prescription drug order, based solely on an online questionnaire does not constitute an acceptable standard of care in Idaho.</p>	<p>Clarified</p>

<p>(4) Prescribing. If a healthcare provider does not have a prior existing relationship with a patient in which there has been a physical examination or in-person encounter, and is authorized to issue prescription drug orders pursuant to that healthcare provider's licensing, then the healthcare provider shall be allowed to issue a prescription drug order to a patient without conducting an in-person physical examination only if the following conditions are met:</p> <ul style="list-style-type: none"> a. the healthcare provider is licensed in this state; b. the episode of care meets the community standard of care; c. a relationship has been established between the healthcare provider and the patient by the provider's agreement to undertake diagnosis and treatment of a patient, and the patient's agreement to be treated, whether or not there has been a physical examination or an encounter in-person between the healthcare provider and patient; d. the prescription drug is not a controlled substance. <p>Nothing in this act shall be interpreted to expand prescriptive authority for any healthcare provider beyond what is authorized by that provider's licensing and regulatory board.</p>	<p>(4) Prescribing. A healthcare provider with an established provider-patient relationship, including a relationship established as provided in 54-5605(2), may prescribe using telehealth within the scope of his or her license and applicable laws and regulations, including the applicable Idaho community standard of care, provided the prescription drug is not a controlled substance, unless the controlled substance is prescribed in compliance with the Ryan Haight Act, 21 USC 802(54)(A).</p> <p>Nothing in this act shall be interpreted to expand prescriptive authority for any healthcare provider beyond what is authorized by that provider's licensing board.</p>	<p>Clarified Simplified</p> <p>Refers to Ryan Haight Act for controlled substances.</p> <p>Deleted (a) (b) (c) since already established elsewhere in the act.</p> <p>Consider IMA recommendation <i>"No prescription drug order may be prescribed through telehealth for the purpose of causing an abortion"</i></p>
<p>(5) Informed consent. Evidence documenting patient informed consent for the use of telehealth technologies must be obtained and maintained when patient consent is required by federal or state law. Appropriate informed consent must, as a baseline, include the following terms:</p> <ul style="list-style-type: none"> a. Identification of the patient, the provider and the provider's credentials; b. Types of transmissions permitted using telehealth technologies; 	<p>(5) Informed consent. A patient's informed consent for the use of telehealth must be obtained as required by federal or state law.</p>	<p>Simplified.</p>

<ul style="list-style-type: none"> c. The patient agrees that the provider determines whether or not the condition being diagnosed and/or treated is appropriate for a telehealth encounter; d. Types of transmissions used must be HIPAA compliant. e. Hold harmless clause for information lost due to technical failures; and f. Requirement for express patient consent to forward patient-identifiable information to a third party. 		
<p>(6) Continuity of care. Patients must be able to seek follow-up care or information from the provider or provider's designee who conducts an encounter using telehealth technologies. Providers solely providing services using telehealth technologies with no existing provider-patient relationship prior to the encounter must make documentation of the encounter using telehealth technologies easily available to the patient, and subject to the patient's consent, any identified care provider of the patient immediately after the encounter.</p>	<p>(6) Continuity of care. Patients must be able to contact and seek follow-up care or information from the healthcare provider or his or her designated healthcare provider.</p>	Simplified.
<p>(7) Referrals for emergency services. The provider shall have an emergency or contingency plan that is communicated to the patient in advance of the telehealth encounter. The provider shall be familiar with or have access to available medical resources in proximity to the patient in order to make referrals or request transfers when indicated.</p>	<p>(7) Referrals for emergency services. A healthcare provider shall be familiar with or have access to available medical resources, including those in proximity to the patient, in order to make appropriate patient referrals when medically indicated.</p>	Simplified.
<p>(8) Medical records. Providers shall generate and maintain a medical record for each patient for whom they provide remote care. All communications with the patient (verbal, audiovisual or written) shall be documented in the patient's unique medical record on par with documentation standards of in-person visits. The patient record established during the use</p>	<p>(8) Medical records. Healthcare providers providing telehealth services to a patient must generate, maintain and allow patient and other healthcare provider access to a medical record for each patient in compliance with applicable state and federal laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA).</p>	Simplified and combined with privacy and security

of telehealth technologies must be accessible and documented for both the provider and the patient, consistent with all established laws and regulations governing patient healthcare records.		
(9) Privacy and security of patient records and exchange of information. Providers shall meet or exceed applicable federal and state legal requirements of medical/health information privacy, including compliance with the Health Insurance Portability and Accountability Act (HIPAA) and state privacy, confidentiality, security, and medical retention rules. Written policies and procedures must be maintained at the same standard as traditional face-to-face encounters for documentation, maintenance, and transmission of the records of the encounter using telehealth technologies.	Combined with medical records (above)	Deleted and combined with medical records
Enforcement and Discipline. Not contained in previous versions	54-5606. Enforcement and Discipline. A healthcare provider is prohibited from utilizing telehealth in his or her practice if the healthcare provider is not in full compliance all applicable laws and regulations, including this act and the applicable Idaho community standard of care. Each Board shall be authorized to enforce this act as it relates to the practice of the individuals it licenses. A healthcare provider who is not in compliance with all applicable laws and regulations, including this act and the applicable Idaho community standard of care is subject to discipline by his or her respective licensing board.	New language suggested by attorneys to clarify regulatory authority
54-5606. Rulemaking. Boards regulating healthcare providers governed by title 54, Idaho Code, may promulgate rules regulating the practice of telehealth pursuant to this chapter and consistent with the provisions contained herein.	54-5607. Rulemaking. Boards regulating healthcare providers governed by title 54, Idaho Code, may promulgate rules regulating the practice of telehealth pursuant to this chapter and consistent with the provisions contained herein.	Same

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